Before the Florida Judicial Qualifications Commission
State of Florida

Supreme Court of Florida
Case No.: SC05-555

Inquiry Concerning a Judge
No. 04-455, Judge John R. Sloop
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SPECIAL COUNSEL'S TRIAL MEMORANDUM

Special Counsel hereby submits the following trial memorandum in connection with the formal charges pending against County Court Judge John R. Sloop. This is an abuse of power case. Judge Sloop is charged with violations of Canons 1, 2A and 3(b)(2)(4) and (8) of the Code of Judicial Conduct, for abusing litigants appearing before him. This resulted in the loss of liberty for eleven people. We will demonstrate this was not a matter of mistake. Judge Sloop jailed these people simply because he could. His conduct and demeanor will also be shown to the Hearing Panel *via* a video in the case of State v. Mercano. Special counsel will show that the nature of the acts alone demonstrate Judge Sloop's "present unfitness" for judicial office, warranting his removal.

FORMAL CHARGE #1

> On or about December 2, 2004, Judge Sloop issued arrest warrants for approximately eleven (criminal) traffic (misdemeanor) defendants who had not answered his docket call, but who were in fact, properly in an adjoining courtroom pursuant to their summonses or the direction of the judicial deputy sheriffs or bailiffs. Judge Sloop

> was informed of the circumstances, but nevertheless proceeded to have the arrest warrants carried out, and these defendants arrested, and initial declined to release them. As a result, these persons remained in jail until their release was considered by another judge. Judge Sloop then revisited his arrest warrants.

FORMAL CHARGE #2

> The instance in paragraph 1 is representative of a recurring pattern and practice of signing arrest warrants when a Defendant does not answer the docket call, resulting in persons being wrongfully incarcerated.

STATEMENT OF FACTS[1]

In 2004, Seminole County was in the process of building a new courthouse. The old courthouse was located at 301 N. Park Avenue. The new courthouse or "Criminal Justice Center" was under construction at 101 Bush Boulevard. On July 1, 2004, Judge Mark Herr, the Administrative County Court Judge issued a memorandum to various law enforcement offices. It advised them that "All criminal traffic citations and misdemeanors bonds returnable for dates commencing Monday, October 4th, 2004" should be returnable to the Criminal Justice Center, "1st Floor arraignment courtroom." (App. A). A second memo extended the

[1] The facts are derived from depositions and documents of record, which are not in dispute, based on depositions and documents of record.

same return date, due to construction delays. (App. B). When law enforcement issued citations, no other courtroom designation was possible. (App. C, Herr. pp. 5-10).

During the week of November 29th through December 3rd, 2004, Judge Sloop presided over criminal misdemeanor traffic cases in Courtroom 1A. Judge Sloop's ordinary practice was to wait until the end of the docket to estreat bonds and to order a capias (arrest warrant) issued. (App. D, Sloop pp. 40-41). To lessen his caseload, Judge Sloop decided to try the practice of calling the name of a person once or twice, and then ordering the issuance of an arrest warrant immediately, if there was no response. (Id. at 40-41). He followed the same procedure all week. On December 2, 2004, this led to the arrest of seven people.[2] Some of these arrests pertained to people misdirected to the wrong courthouse, (Cates) or to the right courthouse, but no designated courtroom, who arrived late (Christie, Harper, Hinkle & Lemon). These people were all taken into custody and locked into the John E. Polk Correctional Facility.

On December 3, 2004, Judge Sloop was conducting criminal traffic misdemeanor hearings in Courtroom 1A. County Court

[2] Michael Belcher, Billy Cates, III, Gary Christie, Lara Fewell, John Harper, James Hinkle and Michael Lemon.

Judge Ralph Eriksson was hearing non-criminal traffic cases in adjacent Courtroom 1B. At approximately 11:00 a.m., Judge Eriksson noticed that he was nearing the end of his calendar, but there were still a lot of people in Courtroom 1B. (App. E, Hartman, p. 24). He started to ask questions. John Hartman, a deputy sheriff assigned to security in Judge Eriksson's courtroom, assisted the Judge in reviewing the citations these people had in their possession. (Hartman p. 18-19). Judge Eriksson learned that these people properly belonged in Courtroom 1A, and directed each next door. (App. F, Eriksson p. 18; Hartman p. 27). Harman stepped through the back door, and spoke to Ollie Csisko, the deputy sheriff assigned to Judge Sloop. (Hartman p. 29). Csisko told him that Judge Sloop had already left the bench, that bench warrants had been issued, but not yet signed, and requested his assistance in taking these people into custody. (Hartman p. 29). Hartman asked Csisko to let the Judge know that these same people had been present that morning in Judge Eriksson's courtroom. (Id. at p. 30).

Hartman next saw Csisko with Judge Sloop, and the Judge was signing arrest warrants. (Id. at 34). When he did not get satisfaction from Csisko that his message had been relayed, Hartman directly spoke to the judge. (Id. at 37). Hartman

wanted to stop Judge Sloop from signing arrest warrants for people he **knew** to be in Judge Sloop's courtroom, or to at least ensure that the Judge had all of the pertinent information. (Id. at 37). Paraphrasing, Hartman told the Judge "excuse me Judge, But I feel I need to tell you that the people that are in the courtroom right now have been in my courtroom all morning." (Id. at 36). Judge Sloop responded, "that's not my problem. It's their responsibility to be in the correct courtroom." (Id. at 37-39). Judge Sloop admits that Hartman advised him of the courtroom mix-up and asked him **not** to issue arrest warrants. He also admits he made no inquiry whatsoever, but continued to insist that he wanted these people arrested. (Sloop pp. 52-54). Judge Sloop then left the courthouse to run a personal errand. (Id. at 54-55).

Deputy sheriffs blanketed the courtroom, as eleven people were arrested. (Hartman pp. 55-56).[3] A sixteen year old minor was the twelfth victim present. She was handcuffed. The panel will hear from two of the victims as to what occurred to them that day.

Judges Eriksson and Herr immediately tried to reach Judge

[3] The deputies made a "command decision" to release the minor, when her parents protested and they checked her age. (Id.

Sloop, as soon as they learned what occurred. However, it was noon and Judge Sloop was "long gone." (Herr pp. 25-26). They tried unsuccessfully to reach then-Chief Judge Perry, and went to see Judge Sloop immediately after lunch. (Herr. p. 28). Judges Eriksson and Herr reached Judge Sloop at approximately 1:30 p.m., as he was preparing for "first appearance" hearings. (Herr. p. 28). For the second time – this time by other judges – Judge Sloop was told that the arrestees were misdirected to the wrong courtroom, and had received bad information. For the second time, Judge Sloop's response was that it was these people's responsibility to get to the right courtroom. Judge Sloop also questioned whether these people were misdirected or lost, or merely walked in off the street. (Herr p. 31; Eriksson p. 26).[4]

Judge Herr was concerned enough to have the release paperwork prepared himself, and he was ready to sign it. However, when Judge Sloop returned from "first appearance" hearings, he signed the papers himself and had it faxed over to the jail. Once again, Judge Sloop made no further inquiry, and

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at 58-59).

[4] Judge Sloop does not remember these conversations, and attributes them to his disorder. (Sloop. pp. 57-58). He does not deny they took place. (Id. at 59).

failed to follow up. If Judge Sloop had taken the time to inquire, he would have learned that the paperwork on which he jailed many of these people was wrong, and gave them no notice to appear in his courtroom. Some were told to appear at the old courthouse, (Parilla, Rugg, Padilla), some were expressly directed to Courtroom 1B, not 1A (Colman, DeClue, Nunez) and some were given little or no information at all. (Daniels, Merced, Murua, Ramirez). Judge Sloop was simply not concerned. If Judge Sloop had taken the time to find out, he would have also learned that these people were not immediately released from jail with a fax. They were held until late that same evening.

On January 6th, 2004, Chief Judge Perry discussed this entire matter with Judge Sloop. Judge Sloop's response was that "I don't see the big deal." It is this Judge's cavalier attitude towards the deprivation of liberty that lies at the heart of the case.

FORMAL CHARGE #3

> In the case of State v. Ramos, Case No.: 04-002343-CFA, Judge Sloop declined to release the Defendant pursuant to the clear mandate of Fla. R. Crim. Proc. 3.134, thereby requiring the Defendants release pursuant to a writ of habeas corpus.

A copy of the petition for writ of *habeas corpus* in Ramos

v. State, Case No.: 04-67-AP (18th Judicial Circuit) and the Writ are attached hereto as (App. G & H). As a result of Judge Sloop's order, the Defendant spent an unwarranted additional month under state supervision.

FORMAL CHARGE #4

> On or about October 18, 2004, in the case of State v. Mercano, Judge Sloop was rude, abrupt and abusive in his treatment of the Defendant, acting more like a prosecutor than a judge.

The Commission will see the videotape, which speaks for itself.

Mitigating Factors

Judge Sloop asserts that he was suffering from undiagnosed ADHD, at the time of the events in question. He will present medical evidence in support of his position. Undersigned had the judge independently evaluated by a psychologist, who finds "some merit" to the diagnosis. (App. F). Judge Sloop was fully cooperative in this investigation. He will also present character evidence as to his continuing fitness to serve.

Aggravating Factors

Failure to heed private warnings from the Commission is properly considered in the determination of appropriate discipline. See In re Schwartz, 755 So. 2d 110 (Fla. 2000). Here, Judge Sloop was elected to the bench in 1990. He has been the subject of three prior notices of investigation, and three private warnings.

On May 31, 1991, Judge Sloop held a woman in an eviction proceeding in contempt of court, and had her remanded into custody, because she referred to him as "feeling stupid." This led to a notice of investigation dated February 26, 1992. (Inquiry #91-370).[5]

In early autumn 1991, during a court hearing, Judge Sloop allegedly displayed a handgun while yelling at a defendant leaving the courtroom. This received broad coverage in the news media, and a notice of investigation dated 10/19/92 (Inquiry #92-229).

On October 1, 2002, Judge Sloop was also charged with being rude and discourteous to a litigant in the case of In re Marriage of Holland, 02-DR-003794-06D-S. This led to a notice

[5] A racially charged comment included in the notice of investigation is disputed by Judge Sloop, and cannot be

of investigation dated August 5th, 2003 (Inquiry 02-419).

None of these charges led to a finding of probable cause. However, each instance dealt with Judge Sloop's abusive treatment of litigants, and one involved the inappropriate jailing of a litigant. In each instance, the Commission privately warned this Judge about his temper. Judge Sloop promised the Commission it would never see him again, and sought no diagnosis or treatment of any illness for 13½ years or until after he ordered the December 3rd 2004 arrests at issue, here.

STATEMENT OF THE LAW REGARDING APPROPRIATE REMEDIES

Fla. Const. art. V, section 12(a)(1) authorizes the Commission to investigate and recommend to the Supreme Court the removal from office of any judge, whose conduct during term of office or otherwise "demonstrate a present unfitness to hold office...." The Commission is also empowered to investigate and recommend judicial discipline, defined as "reprimand, fine, suspension with or without pay, or lawyer discipline."

To impose any degree of discipline against a judge, the evidence regarding the charges against him must be clear and convincing. In re LaMotte, 341 So. 2d 513 (Fla. 1977); In re Graziano, 696 So. 2d 744 (Fla. 1997). The object of these

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confirmed.

disciplinary proceedings is "not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." In re Kelly, 238 So. 2d 565, 569 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed.2d 246 (1971).

Removal from judicial office is reserved for cases involving the most egregious misconduct, as the Florida Supreme court will not lightly remove a sitting judge from office. See In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Kelly, 238 So. 2d 565 (Fla. 1970), cert. den., 401 U.S. 962, 92 S.Ct. 970, 28 L.Ed.2d 246 (1971).

However, in determining whether a judge conducted himself in a manner which erodes public confidence in the judiciary, this Commission must consider the act or wrong itself. In re LaMotte, 341 So. 2d at 513. Where the acts are egregious enough, they speak for themselves and warrant removal even in the fact of an otherwise unblemished record.[6] See In re Johnson, 692 So. 2d 168, 172-73 (Fla. 1997). In re Henson, 913 So. 2d 579, 593 (Fla. 2005) ("We have previously removed judges despite strong character evidence or an unblemished judicial record when their misconduct was fundamentally inconsistent with the

responsibilities of judicial office **or** struck at the heard of judicial integrity."). If a judge commits a grievous wrong which should erode confidence in the judiciary, but it does not appear that the public has lost such confidence, "the judge should nevertheless be removed." In re LaMotte, 341 So. 2d 513 (Fla. 1977). Moreover, conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents, or by evidence "of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct, unbecoming a member of the judiciary." In re Kelly, 238 So. 2d at 566l In re Shea, 759 So. 2d 631, 638 (Fla. 2000).

The discipline of removal is **not** limited to basic dishonesty in office, but applies to conduct "fundamentally inconsistent with the responsibilities of judicial office." In re McMillan, 797 So. 2d 560 (Fla. 2001); In re Shea, 759 So. 2d 631 (Fla. 2000); In re Graziano, 696 So. 2d 744 (Fla. 1997). Judges have also been removed for abuse of their judicial powers. See In re Shea, 759 So. 2d 631, 638 (Fla. 2000) (intimidating attorneys into withdrawing from a case, plus judge's lack of respect and temperament in dealing with others

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[6] Judge Sloop has no such record.

with whom he had contact, seriously undermined public trust in the judiciary); In re Graziano, 696 So. 2d 744 (Fla. 1997) (intervening in hiring decision to obtain promotions and raises for close friend and abuse of court personnel); In re Graham, 620 So. 2d 1273, 1275 (Fla. 1993) (repeated acts of abuse of power and refusal to administer justice based on his own perceptions of "political favoritism in the sheriff's office."); In re Crowell, 379 So. 2d 107 (Fla. 1979) (judge's tendencies to lose his temper when confronted with personal failings and shortcomings of others, including abuse of the contempt power). Cumulative conduct over a period of time and the totality of the circumstances may also warrant more extreme remedial action. In re Graham, 620 So. 2d at 1276-77; In re Crowell, 379 So. 2d at 110; *Cf.* In re Trettis, 577 So. 2d 1312 (Fla. 1991).

In McMillan, the Florida Supreme Court found that a "lack of bias and partiality is an essential prerequisite to service as a judicial officer." It thus removed a judge for promises of partiality in favor of a constituency, coupled with his action as a judge and a witness in the same case. In re McMillan, 797 So. 2d at 571. Judge McMillan's conduct was inconsistent with the fundamental impartiality prerequisite to his service.

The "presumption of innocence" likewise is the bedrock of

our criminal justice system. See Estelle v. Williams, 425 U.S. 501, 503; 965 Ct. 1691, 48 L. Ed.2d 126 (1976); Coffin v. United States, 156 U.S. 432, 452-54 (1895).[7] "Liberty" is also a fundamental right written into the Declaration of Independence and the United States and Florida Constitutions. Here, Judge Sloop's actions and various statements are inconsistent with the application of these bedrock principles. Judge Sloop **presumed** that eleven people were guilty of being late to his courtroom, and had them arrested without inquiry. He continued to insist on that presumption, when told otherwise by a deputy sheriff and two judges. Judge Sloop even questioned how the other judges could know that these people did not "walk in off the street."

Moreover, even after the fact, Judge Sloop did not understand what was "the big deal." (Sloop p. 66). In his deposition taken in September 2005, Judge Sloop testified that he understood that "a horrible mistake took place." but "I'm not sure that I can agree that when they are directed to Courtroom 1-A, and they are told by a deputy to go to a different place that deputy's mistake would countermand where they were supposed to be." (Sloop p. 70). Thus, even today,

[7] Overruled on other grounds, United States v. Darby, 289 U.S. 224 (1933).

Judge Sloop does not fully recognize his responsibility for having these people wrongfully arrested. (Id. at 69).

"A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others." In re Graham, 620 So. 2d at 1276. This is not a problem that can be cured by medication, or rewarded by further judicial service.

Judge Sloop's quick temper, abrasiveness in his treatment of litigants is likewise **not** a new issue. He was warned three times previously about this by the Commission. The medical reports confirm this is a recurrent problem. Among other things, "Judge Sloop appears to have an undercurrent of defensive vigilance and hostility that rarely subsides. His superficial affability may collapse easily, and he appears ready to deprecate anyone who challenges his dominance or beliefs." (App. H, Day report p. 8). "When situations do not go his way, he may become contentious, engage in caustic comments and display a temper. He is likely to act on impulse, using insufficient deliberation and poor judgment." Id. at 9. Judgment is the **essence** of a judge's job.

> [T]he secret of a judge's work is that ninety-nine percent of it is with trivial matters, and that none of them will shake the cosmos very much. But they are apt to

> shake the litigants gravely. It is only his power over people that makes them treat him as a demi-god, for government touches them more perceptibly in the courtroom than at any other point in their lives....

Curtis Bok, "I Too, Nicodemus."

"A judgeship is a position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice." In re Graham, 620 So. 2d at 1277. That is precisely how Judge Sloop acted here.

In sum, Judge Sloop's conduct speaks for itself, and demonstrates his present unfitness for judicial office. It has eroded public confidence in the judiciary and warrants his removal.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via FedEx this ___ day of November, 2006 to:

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